

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

ST. LOUIS COUNTY FIRE FIGHTERS)	
ASSOCIATION, LOCAL 398, IAFF,)	
)	
Petitioner,)	
vs.)	Public Case No. 76-018
)	
CITY OF UNIVERSITY CITY, MISSOURI,)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION**

JURISDICTIONAL STATEMENT

The State Board of Mediation has jurisdiction to hear and decide this matter pursuant to Section 105.525 RSMo. 1969, which provides in pertinent part:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation."

The City of University City argues that any Board determination as to an "appropriate bargaining unit" would violate the provisions of the Missouri Constitution, Article VI, Section 22, when applied to the City, a constitutional charter city pursuant to Article VI, Section 19 of the Missouri Constitution, and would therefore be unconstitutional and void.

Article VI, Section 22 provides:

"No law shall be enacted creating or fixing the powers, duties or compensation of any municipal officer or employment for any city framing or adopting its own charter under this or any previous constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents."

This Board is an administrative agency of Missouri, and as such, is not clothed with the power or duty to construe a statute or practice in the light of constitutional

protections. Administrative agencies do not have the authority to determine constitutional questions. City of Joplin, Missouri, et al. v. Industrial Commission of Missouri, et al., 329 S.W.2d 687, 689 (Mo. 1959). The Board will therefore hear and decide this matter.

FINDINGS OF FACT

This case appears before the State Board of Mediation upon St. Louis County Fire Fighters Association, Local 398, IAFF, (hereinafter referred to as "Petitioner"), filing a Petition for determination of an appropriate bargaining unit and majority representative status for all Fire Department employees of the City of University City, Missouri, (hereinafter referred to as "City"), approximately forty-seven employees.

The City objected to the inclusions in an appropriate unit the positions of Fire Chief, Assistant Fire Chief, Fire Marshall, Fire Captain, and Ambulance Driver. The City's basis for opposing the inclusion of the Chief, Assistant Chief, Fire Marshall, and Fire Captains in an appropriate unit was that these positions are supervisory and therefore do not show a "clear and identifiable" community of interest with the other members of the Fire Department.

On March 18, 1977, a hearing to resolve these issues was conducted by a quorum of the Board at the Civil Courts Building, St. Louis, Missouri, at which time the following evidence was received and made a part of the record.

At the outset of the hearing, the parties stipulated for purposes of the Board's decision that the positions of Chief, Assistant Chief, and Fire Marshall should be excluded from an appropriate unit. The parties also agreed that the position of Ambulance Driver should be included in an appropriate bargaining unit. Therefore, the only issue for the Board to determine in this matter is whether or not the position of Fire Captain is supervisory, and should accordingly be excluded from an appropriate bargaining unit of employees of the City's Fire Department.

The City has a total of three fire houses. Fire House Number One is located at Delmar and Harvard Avenues. Fire House Number Two is located at 6970 Olive Street Road, and Fire House Number Three is located at 1045 North and South Road. Even though the City has three fire houses, over the last year Fire House Number Two has been closed down more than fifty percent of the time.

As of July 1, 1976, the City employed a total of forty-five (45) full-time employees in the Fire Department, including thirty (30) Firefighters, twelve (12) Fire Captains, one (1) Fire Marshall, one (1) Assistant Fire Chief, and one (1) Fire Chief.

Two Captains normally direct and assign six firefighters and one ambulance driver at Fire House Number One; while one Captain at Fire House Number Two and one Captain at Fire House Number three have the sole responsibility for directing and assigning the three men who are normally on duty at each of these houses.

As of January 1, 1977, the compensation payable to Fire Captains per month as set by Ordinance Number 5012 ranges from \$1053 to \$1275. The monthly base salary range for firefighters in the private class is \$785 to \$1003; and the monthly base salary range for the position of Fire Chief is \$1336 to \$1536.

The Fire Captain is directly responsible to the Assistant Fire Chief and assists him in the discharge of his duties. The Captain, who works a twenty-four-hour shift and resides with the other firefighters, is in charge of the fire station during his shift; he is responsible for the supervision of the firefighters on an assigned shift, the efficient operation of the fire station, and assuring the proper maintenance of firefighting apparatus and equipment.

In the absence of a superior officer at a fire, the usual circumstance, Fire Captains are responsible for determining and directing the proper methods to be used in extinguishing fires. Upon their arrival at the fire scene, the Captains direct and supervise the firefighters; and in that connection, he has the responsibility for

determining what type of equipment and apparatus is required for each specific situation.

At the station house, the Captain's duties include handling numerous reports and other paper work, as well as the supervision and direction of the cleaning and maintenance of the firefighting equipment and of the fire station.

The Captain is also responsible for maintaining proper company discipline, reporting any irregularities, and making wage and promotional recommendations.

The Captains also supervise and participate in training activities.

The Fire Captains also serve on the Selection Review Board which is made up of two Fire Captains, Assistant Fire Chief, and the Chief. The Review Board selects candidates for the firefighter position. At least annually, Captains rate the performance of individual firefighters serving under their command for purposes of pay evaluation and discipline.

In general, each Captain must possess considerable knowledge of the principles, practices and methods of firefighting, as well as have considerable knowledge of, and skill in, the operation and maintenance of the various types of apparatus and firefighting equipment used by the fire department to insure that the equipment and apparatus operate efficiently. Lastly, the Captain possesses a considerable knowledge of first aid and is skilled in directing and providing training in its application and in the use of life saving equipment.

CONCLUSIONS OF LAW

Section 105.525 RSMo. 1969 states:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation. . ."

Appropriate unit is defined in Section 105.500(1) RSMo. 1969 as:

" . . . a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

It is the position of this Board that supervisors cannot be included in the same bargaining unit as the employees whom they supervise, because of a lack of community of interest. Therefore, it is necessary to make a determination as to whether or not the position of Captain within the University City Fire Department possess sufficient supervisory qualities to exclude him from a unit of firefighters. In the case of St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Public Case No. 76-013, and St. Louis County Fire Fighters Association, Local 398, IAFF vs. Chesterfield Fire Protection District, Public Case No. 76-022, this Board set forth the factors which are considered in determining whether an employee is a supervisor. They are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

The burden of proof in this case lies with the Petitioner. The petitioning party has the duty to make his case; in this instance to develop the evidence to demonstrate to this Board that the Captains share a community of interest with the other firefighters. The Petitioner must remove the issue from a field of conjecture and establish it by substantial evidence of probative value, or by inferences reasonable to be drawn from evidence. Farnham v. Boone, 431 S.W.2d 154, (Mo. 1968). This the Petitioner has failed to do.

The Petitioner neglected to address himself to the factors previously set out by this Board for application in these cases and this omission leaves this Board with no other alternative but to exclude the Captains from an appropriate unit.

It is not necessary to discuss the seven aforementioned facts in detail as they apply to this matter. It is sufficient to state that the competent and substantial evidence upon the whole record supports the position that Captains are supervisors and should not be included in an appropriate unit of firefighters.

It should be understood that each case as it appears before the Board rests on its own merits. The Board may decide in future cases, as it has done in prior decisions, that the position of Captain should be included in appropriate units.

DECISION

It is the decision of this Board that the following unit in the City of University City Fire Department is appropriate:

All employees of the City of University City Fire Department including the positions of Firefighter and Ambulance Driver, but excluding the positions of Captain, Fire Marshall, Assistant Chief and Chief.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as

possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by St. Louis County Fire Fighters Association, Local 398, International Association of Fire Fighters.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within (10) days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Dated this 25th day of July, 1977.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael Horn, Chairman

/s/ Stanley W. Cox
Stanley W. Cox, Employer Member

/s/ Robert Missey
Robert Missey, Labor Member